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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,887	09/16/2003	Alvin S. Blum	B70326	4502

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ALVIN S. BLUM
2350 DELMAR PLACE
FORT LAUDERDALE, FL 33301

EXAMINER

HUYNH, KHOA D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 08/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,887

Applicant(s)

BLUM, ALVIN S.

Examiner

Khoan D. Huynh

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-16, as presently understood and given the broadest reasonable interpretations, are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwakura (GB 2188545) in view of Willis (2690568).

Regarding claims 1, 5 and 8, the Iwakura reference discloses a one-piece, self-contained disposable device for receiving waste, i.e. urine from a person. The device includes a waterproof bag (10) having a top opening (10a), a closed bottom and opposed long sides. The device further includes sealing means (11) encircling an inner aspect of the bag adjacent the top opening.

The Iwakura reference DIFFERS in that it does not specifically include a pair of tubular members as claimed. Attention, however, is directed to the Willis reference which discloses another urinary disposable device (Fig. 7) having a top opening, a closed bottom (col. 5, lines 4-6), opposed long side and a pair of tubular loops or members (col. 3, lines 28-32) affixed to and extended along the long sides. Each of the members includes an aperture dimensioned for receiving a finger therein such that the fingers may hold open the top opening while positioning the fingers and device around a urine discharge orifice of the person.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Iwakura device by employing a pair of tubular members, in view of the teaching of Willis, in order to provide a convenient holder mechanism that allows the user to position and adjust the device without dropping it while preventing the user's hand from touching the waste.

Regarding claims 2 and 9, the device is constructed of plastic material.

Regarding claims 3, 10 and 12, the sealing means is a rib (11a) and groove (11b) mechanism (Fig. 2).

Regarding claims 4, 11 and 13, each of the members also includes a grasping tab (the edge portion of the member as schematically shown in Figure 7) that is capable of being used to facilitate the insert of the fingers in the members. Furthermore, since applicant does not specifically show the detailed structure of the grasping tab, it is reasonable for the examiner to take the position that the grasping tab is the edge portion of the loop or member.

Regarding claims 6, 7, 14 and 15, each of the members also includes an annular element (in the form of a stiffer material that allows the loops or members to be free from flattened) at the aperture constructed to hold the aperture open.

Claim 16 is the combination of the claims 8 and 15 which are rejected as discussed above.

Response to Amendment

3. Applicant's amendment, filed on 06/25/2004, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

4. Applicant's arguments filed on 06/25/2004 with respect to the pending claims have been fully considered. However, they are deemed not persuasive.

Applicant asserts that there is no suggestion or teaching to combine the references, i.e. Iwakura (GB 2188545) in view of Willis (2690568) to arrive at applicant's invention as claimed. See the Remarks section.

The examiner recognizes that references cannot be arbitrarily combined and that there must be some reasons why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

In this case,

(a) Iwakura and Willis are analogous arts and within the same field of endeavor since they both teach a disposable device for receiving a waste such as urine; and

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(b) Iwakura does teach self-contained disposable device for receiving waste, i.e. urine from a person having substantially all claimed features except for the tubular members. Willis also teaches a urinary disposable device and is applied herein for the teaching of using tubular members to provide a convenient holding mechanism that allows the user to position and adjust the device without dropping it while preventing the user's hand from touching the waste. The examiner maintains that such modification, i.e. using tubular members as a holding mechanism in the disposable device for receiving urine is well within one of ordinary skill art and is not convinced that the using of such tubular members as the holding mechanism rises to the level of patentability.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (703) 306-5483. The examiner can normally be reached on M-F (7:00-4:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HK

08/02/04



MICHAEL MAR
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700